



Legal Tools for the Family Caregiver



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Estate Planning, Elder Law, Special Needs Planning

Tools for the Family Caregiver

- ▶ Healthcare Power of Attorney
- ▶ Advance Directive for a Natural Death (Living Will)
- ▶ Durable General Power of Attorney
- ▶ Special Needs Trust
- ▶ Caregiver Agreement



Advance Directives vs. Physicians Orders

Advance Directive – any statement by a competent individual of the individual's preferences for treatment and/or appointment of a decision maker, in the event the person loses the ability to make decisions.

Formal Advance Directives:

- ▶ Advance Directive for a Natural Death (Living Will)
- ▶ Health Care Power of Attorney

Medical Orders:

- ▶ DNR (Do Not Resuscitate)
- ▶ MOST (Medical Order for Scope of Treatment)

DNR

MOST

STOP DO NOT Resuscitate

Effective Date: _____
 Expiration Date, if any _____

Check box if no expiration

DO NOT RESUSCITATE ORDER

Patient's full name: _____

In the event of cardiac and/or pulmonary arrest of the patient, efforts at cardiopulmonary resuscitation of the patient SHOULD NOT be attempted. This order does not affect other medically indicated and ordered care.

I have documented the basis for this order and the consent required by the NC General Statute 90-21.17(b) in the patient's records.

Signature of the MD or Physician/Physician Assistant/Nurse Practitioner: _____

Printed Name of Attending Physician: _____


Address: _____

City, State, Zip: _____

Telephone Number (office): _____

Telephone Number (emergency): _____

Do Not Copy Do Not Alter



Medical Orders for Life-Sustaining Treatment (MOLST)

THE PATIENT KEEPS THE ORIGINAL MOLST FROM (S)HE(S) TRAVEL TO DIFFERENT CARE SETTINGS. THE PHYSICIAN COMPLETES THIS

DO NOT RESUSCITATE (DNR) and Other Life-Sustaining Treatment (OLST)

This written order form that will inform the patient's wishes for life-sustaining treatment. Create one professional order complete or change the MOLST form based on the patient's or his/her medical condition, values, attitudes or MOLST instructions. If the patient is unable to make such decisions, the order should reflect patient wishes as best understood by the health care provider or surrogate. Instructions may appear the MOLST form. Additional care professionals must follow their own policies as the patient's health care provider is notified unless a physician explicitly instructs the provider to change them.

MOLST is primarily for patients with serious health conditions. The patient or other decision-maker should work with the physician and consider asking the physician to fill out a MOLST form if the patient:

- Plans to end or change any or all life-sustaining treatment.
- Has had a long-term health condition or responsibility with care services.
- Expects death in the next year.

If the patient has a developmental disability and has not been able to decide, the doctor must follow special procedures and allow if the appropriate legal requirements are met.

SECTION A - Resuscitation Instructions: What the Patient Wishes to Do About Life-Sustaining Treatment

Check one:

OLST Order: Allow All Cardiopulmonary Bypasses
 OLST involves artificial breathing and chest compressions on the chest to try to restart the heart. It usually involves chest-to-chest cardiopulmonary bypass. Patients have been known to die the attempt to restart breathing for patients. A maximum of 20 minutes of chest compressions will be done in pending for when the health steps to breathing stops, including any you wish to be using machine and being transferred to the hospital.

DNR Order: Do Not Attempt Resuscitation (Allow Natural Death)
 This means do not perform CPR, or chest compressions to restart the heart, or breathing that stops if other steps.

SECTION B - Consent for Physical and Psychological Care (See Section A)

The patient or his/her surrogate must be qualified if he or she has the ability to decide about resuscitation. If the patient does not have the ability to decide about your doctor and his health care plan, the health care professional has the decision. If there is no health care proxy, another person will decide. There are no cost limitations for this law.

Signature: _____ One Physical Order (Same signature as the Name) Two

Print name of patient or surrogate: _____

Print name of physician: _____

Who order the doctor? Patient Health Care Agent Public Health Law (long-term) Patient's Health Care Plan Other Health Care Provider

SECTION C - Physician Signature for Sections A and B

Signature: _____ Health Care Provider: _____

Print name of physician: _____ Print name of hospital/clinic: _____

SECTION D - Assisted Dying

This is not intended to be used for assisted dying. It is not intended to be used for assisted dying.

Health Care Proxy Living Will Will or Advance Directive Assisted Dying of Life-Awaiting Death

Print name of patient or surrogate: _____ Print name of physician: _____

Healthcare Powers of Attorney

- ▶ Naming someone to make health care decisions when you lack capacity to communicate your own decisions



Living Will

Advance Directive for A Natural Death

A document where you state your wishes for life sustaining treatment.



What Treatment Can Be Withheld?



- ▶ “Life sustaining procedures”
 - ▶ Defined as care or treatment that only serves to prolong dying process.
- ▶ Can include mechanical ventilation, antibiotics, dialysis, artificial nutrition and hydration, etc.

Who decides if there is no directive?

- ▶ Spouse
- ▶ Majority of Available Parents and Children
- ▶ Majority of Available Siblings
- ▶ Individual with “Established Relationship”
- ▶ Attending physician



Planning for Incapacity Money Management

Durable Power of Attorney

vs.

Joint Ownership



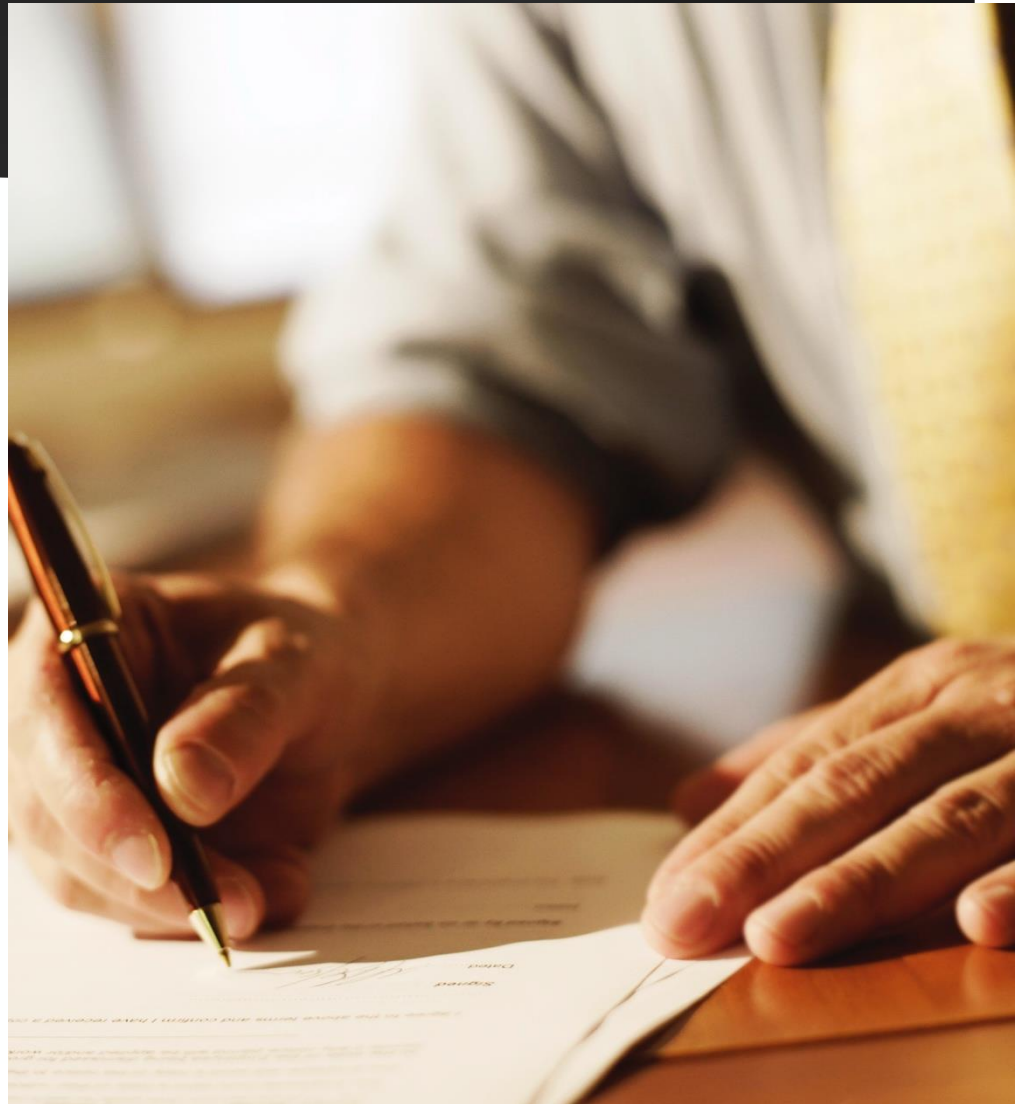
Titling Assets Jointly With Children

- ▶ Parents' assets now subject to creditors and liabilities of child
- ▶ Tax Issues
 - ▶ Gift Tax
 - ▶ Capital Gains Tax
- ▶ Disrupts estate plan



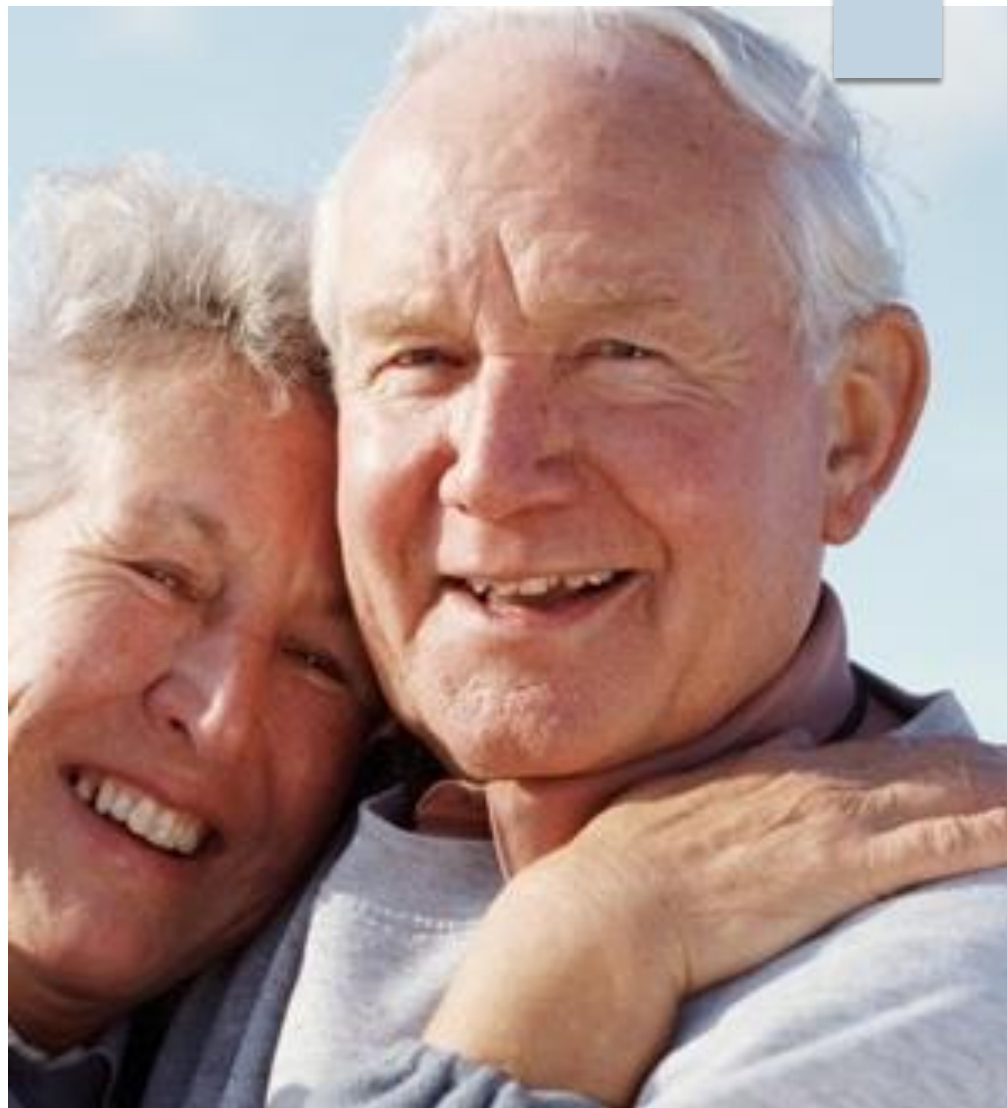
Power of Attorney

A written instrument where one person (the Principal) gives another person (the Agent) the authority to manage the Principal's property



Jack and Jill

- ▶ Married 40 years
- ▶ Jack has advanced dementia
- ▶ Nursing home costs \$10,000 per month.
- ▶ Jack has a power of attorney, appointing Jill as his agent.



Power of Attorney



- ▶ Gifting Powers
 - ▶ Power to sign deeds, sell or purchase property is not the same as the power to gift the property
 - ▶ Gifting is not presumed
 - ▶ Problems with limitations on gifting
 - ▶ Community Spouse
 - ▶ Disabled Child

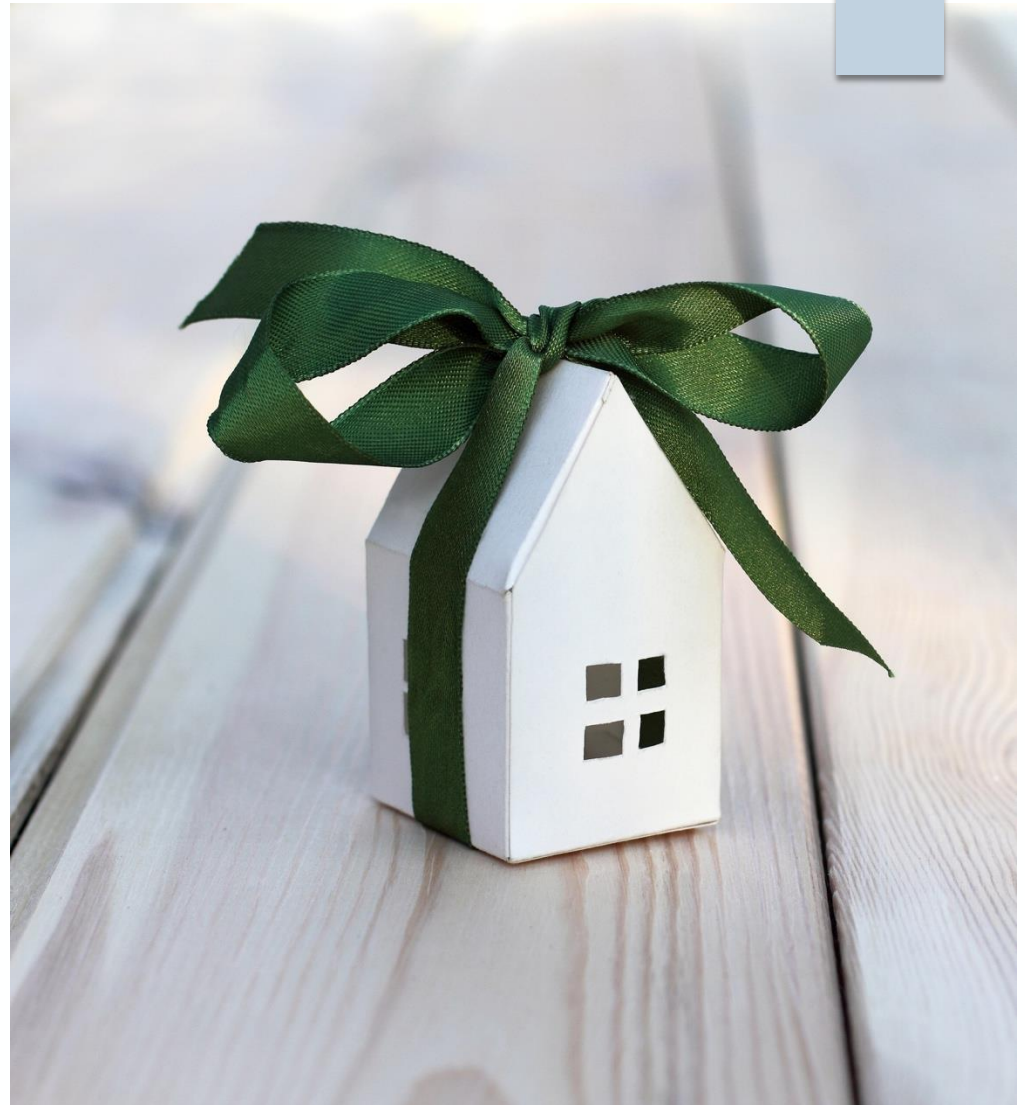
Jack and Jill Medicaid Eligibility

- ▶ Nursing Home Spouse - \$2,000
- ▶ Community Spouse – Half of “countable resource” up to a max of \$157,920
- ▶ House is non-countable, but if home is in Jack’s name at his death, it will be subject to estate recovery.



Jack and Jill

- ▶ Jill would like to transfer the house into her sole name.
- ▶ Jack's power of attorney states that Jill can make gifts of Jack's property "***in amounts not to exceed the annual exclusion amount for federal gift tax purposes.***"



Jack and Jill



- ▶ Due to the limitation on gifting in the POA, Jill cannot re-title the house in her name.
- ▶ She finds out that she can apply for Medicaid, but if the property is in Jack's name at his death, it will have to be sold to payback the state.
- ▶ Jill will have to petition the Court if she wants to transfer the house into her name.

Jim and Susan



- ▶ Jim has a power of attorney that allows gifts to Susan as his spouse without a limitation on the amount.
- ▶ Susan applies for Medicaid for Jim and uses the POA to transfer the house in only her name.

Jim and Susan



- ▶ To further protect the property upon Susan's death, Susan updates her Will to leave everything to Jim in a special needs trust.
- ▶ This means Jim won't lose his Medicaid if he inherits property from Susan and the property can pass to the couple's children at both of their deaths.

Special Needs Trust



- ▶ A trust set up in your will for a disabled spouse
- ▶ The Trustee uses the funds in the trust to pay for things the disabled spouse needs
- ▶ If the disabled spouse is on Medicaid, the trust will not cause him or her to lose Medicaid
- ▶ At the disabled spouse's death, the funds pass to the children (or whomever you choose)

Bob and Ruth



- ▶ Ruth has advanced dementia and is no longer able to manage her bank accounts.
- ▶ Ruth does not have a power of attorney.

Guardianship

- ▶ Incompetency Hearing
 - ▶ Service by Sheriff
- ▶ Appointment of a Guardian ad Litem (G.A.L.)
- ▶ G.A.L. makes a recommendation to the court
- ▶ If declared incompetent, Guardian appointed



Bob and Ruth

- ▶ Ruth has \$300,000 in an account titled in her name only
- ▶ Ruth and Bob own their house jointly
- ▶ Bob is appointed General Guardian for Ruth



Bob and Ruth

- ▶ Guardianship Fees = \$1,200
- ▶ Bond Premium = \$3,000
- ▶ Bob can't sell the couple's house w/o court approval
- ▶ Bob must petition the court whenever he needs to use money in the guardianship estate for Ruth's care.
- ▶ Bob must file annual accountings with the Clerk of Court



Judy's Story

- ▶ Judy hired a caregiver to help with bathing, dressing and meal preparation. She did not use a contract.
- ▶ A few years later, Judy needed nursing home care.
- ▶ When Judy applied for Medicaid she was told that the money she paid her caregiver was considered a “transfer of assets” and she would not get any assistance from Medicaid for 3 years!



Caregiver Agreements



- ▶ Must be in writing, signed by the caregiver and the recipient (or his or her agent) and must be dated
- ▶ Must be signed before services are performed
- ▶ Either party must be able to terminate at any time
- ▶ Person receiving care can not be in a nursing home at the time
- ▶ Services must be recommended in writing and signed by doctor as necessary to prevent entry into a nursing home
- ▶ Must specify the type, frequency, and duration of services
- ▶ Must specify amount to be paid
- ▶ Amount paid can't be greater than fair market value

Planning Tips



- ▶ Meet with a qualified elder law attorney
- ▶ Health Care Power of Attorney – name someone to make health care decisions for you
- ▶ Living Will – have a talk with family members about your wishes for end of life treatment
- ▶ Durable Power of Attorney – consider whether the agent should be able to make gifts to the spouse or others
- ▶ Caregiver Agreements – must have written agreement if payments are made to caregivers
- ▶ Update Last Will & Testament – consider special needs trust.

THANK YOU!



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